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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,181	07/23/2003	Donald E. Weder	8403.939	8236
30589	7590	09/15/2004	EXAMINER	
DUNLAP, CODDING & ROGERS P.C.			PALO, FRANCIS T	
PO BOX 16370			ART UNIT	
OKLAHOMA CITY, OK 73113			PAPER NUMBER	
			3644	

DATE MAILED: 09/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,181

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Terminal Disclaimer

The terminal disclaimer filed on 5/19/04 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US Patent 6,618,992 has been reviewed and is accepted.

The terminal disclaimer has been recorded.

Allowable Subject Matter

The indicated allowability of claims 1-17 is withdrawn in view of the amended independent claims and addition of new claims.

Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 11-17, 19-21, 24-26, 28-36, 38, 41-42, 44-49, 51-53, 55-63, 65,

67-69, 71-76, 78-80 are rejected under 35 U.S.C. 102(b),

as being anticipated by Lin (GB2252708A) 1992.

Regarding **independent claim-1** (and reworded **independent claims 28 and 55**):

The three independent claims each cite **a base portion** (having upper and lower ends, and outer peripheral surface and an interior space when opened), **a plurality of preformed folds in the base portion**, and **a constriction element preattached to a portion of the preformed sleeve**; the independent claims vary in their respective reworded functional language concluding statements, regarding forming a constricted area in the plurality of preformed folds in a portion of the base portion. Independent claim-1 as amended adds the limitation that “the constriction element surrounds the preformed sleeve”.

The amendment to independent claim-1 and addition of new independent claims 28 and 55 with new attendant dependent claims, necessitates the art rejections that follow; and the rejection of independent claim-1 as encompassing the similar independent claims 28 and 55, is applicable to independent claims 28 and 55.

The rejection of independent claims 28 and 55 will therefore not be repeated herein this Final Office Action.

Lin GB'708 discloses in the Abstract the insertion of a ribbon through holes in the flower pot cover sheet material so as to fasten the sheet into normal pot shape before mounting under and around a flower pot, this is read as; “a preformed sleeve”, as cited in the instant claims.

A base portion as cited, a plurality of preformed folds (folding lines 101 and 102) in the base portion and a constriction element (20) preattached to a portion of the preformed sleeve are evident from Figure-2 of Lin.

Furthermore, Lin depicts the constriction element as surrounding the preformed sleeve as cited in independent claim-1.

The sleeve (10) and constriction element (20) of Lin are capable of the functional recitations cited in the instant claims, and in consideration of the aforementioned discussion, the instant invention as recited in independent claims 1, 28 and 55 is anticipated by the pot cover of Lin.

Regarding the independent method claims 12, 44 and 71:

The instant independent method claims are structured like the instant independent preformed sleeve apparatus claims, except for the addition of the method step of “disposing the pot into the base portion of the preformed sleeve after the preformed sleeve has been opened”.

The rejection of independent apparatus claim-1 therefore also applies to the independent method claims, as the structure of the sleeve as cited in the instant independent apparatus claims is recited in the instant independent method claims.

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Furthermore, as discussed above in the rejection of claim-1, Lin GB'708 discloses insertion of a ribbon through holes in the flower pot cover sheet material so as to fasten the sheet into normal pot shape **before mounting under and around a flower pot**; this teaching of Lin is read as "disposing the pot into the base portion of the preformed sleeve after the preformed sleeve has been opened", as cited in the instant independent method claims.

Regarding **repeating dependent claims 2, 15, 29, 47, 56 and 74**:

The discussions above regarding the independent claims are relied upon.

The sleeve upper portion of Lin is capable of detachment as cited (given the broadest reasonable interpretation).

Regarding **repeating dependent claims 3, 13, 30, 45, 57 and 72**:

The discussions above regarding the independent claims are relied upon.

As depicted in the figures of Lin, the base portion is capable of substantially covering the outer peripheral surface of a pot, as cited.

Regarding **repeating dependent claims 4-6, 31-33 and 58-60**:

The discussions above regarding the independent claims are relied upon.

The sleeve of Lin is capable of the thickness ranges cited, for the well-known advantages of those features (in the absence of any criticality to thickness).

Regarding repeating dependent claims 7, 34 and 61:

The discussions above regarding the independent claims are relied upon.

Lin discloses aluminum foil, bamboo or plastic as conventional materials for sleeve materials (page-1, second paragraph).

Regarding repeating dependent claims 8, 14, 35, 46, 62 and 73:

The discussions above regarding the independent claims are relied upon.

Lin discloses bottom folding lines (101) and wall folding lines (102)[page-2, last paragraph], read as; "folds further comprises a plurality of pleats", as cited.

Regarding repeating dependent claims 9, 36 and 63:

The discussions above regarding the independent claims are relied upon.

Lin discloses "each of the top portions (103) may have a different height, or may be designed into different shapes (page-3, last paragraph); said top portions are capable of serving as a handle or support device (given the broadest reasonable interpretation) as cited.

Regarding repeating dependent claims 11, 38 and 65:

The discussions above regarding the independent claims are relied upon.

Lin depicts and discloses bottom folding lines (101) and wall folding lines (102)[page-2, last paragraph], read as; "a gusset in the lower end of the base portion", as cited.

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Regarding repeating dependent claims 16, 48 and 75:

The discussions above regarding the independent claims are relied upon.

Lin teaches “a flower pot cover” (Title); “a floral grouping disposed therein”, as cited, would be an inherency to the device of Lin.

Regarding repeating dependent claims 17, 49 and 76:

The discussions above regarding the independent claims are relied upon.

The instant claims are Product-by-Process claims, and the product claimed does not depend on the process of making it; therefore, the discussion immediately above applies as well to these instant product-by-process claims.

Regarding repeating dependent claims 19, 24, 40, 51, 67 and 78:

The discussions above regarding the independent claims are relied upon.

The sleeve lower end of Lin as depicted has a closed base portion, as cited.

Regarding repeating dependent claims 20, 25, 41, 52, 68 and 79:

The discussions above regarding the independent claims are relied upon.

Lin discloses “each of the top portions (103) may have a different height, or may be designed into different shapes (page-3, last paragraph), read as; “a curved upper end”, as cited.

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Regarding repeating dependent claims 21, 26, 42, 53, 69 and 80:

The discussions above regarding the independent claims are relied upon.

A ribbon, as cited, is recited in claim-1 of Lin.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims (10, 37, 64), (18, 23, 39, 50, 66, 77), (22, 43, 70) and (27, 54, 81)

are rejected under 35 U.S.C. 103(a) as being unpatentable over

Lin (GB2252708A) 1992 in view of Weder (US 5,490,352)

Regarding repeating dependent claim groups (10, 37, 64) and (18, 23, 39, 50, 66, 77):

The discussions above regarding the independent claims are relied upon.

Lin is silent as to a drainage element in the base portion, and to an open base portion, as cited in the instant claims.

An open base portion and drainage hole are being treated as the same limitation.

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Weder teaches a drainage hole in a sleeve and pot (Figures 1,4 and 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided an open base portion or drainage element (hole) in the base of Lin as cited, and as taught by Weder, for the well-known advantages of those features (drainage specifically).

Claims (22, 43, 70) and (27, 54, 81) are rejected under 35 U.S.C. 103(a),

as being unpatentable over

Lin (GB2252708A) 1992 in view of Weder (US 5,402,599)

Regarding **repeating dependent claim groups (22, 43, 70) and (27, 54, 81)**:

The discussions above regarding the independent claims are relied upon.

Lin is silent as to a bonding material thereon the sleeve and attaching the sleeve to the pot as cited in the instant claims.

Weder teaches in the Abstract, "a bond or other tying device may also be used to bond the sheet of material to the flower pot".

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided a means of attaching the sleeve to the pot of Lin as cited, and as taught by Weder, for the well-known advantages of those features.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Applicant's Statements As To Information Not Found In Patents Or Publications, disclosed on page-2, Section-3 of the IDS, is relied upon for a number of the dependent claim rejections.

Auslander '981 teaches a sleeve for covering a pot as cited, having a base portion as cited, a plurality of folds as cited, and a constricting element as cited.

Hughes '563 teaches a sleeve for covering a flower pot, having a base portion, a plurality of folds, and constricting elements.

Witts '267 teaches an open bottom in a plant sleeve.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed,

and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu.,Th.-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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SUPERVISORY PRIMARY EXAMINER



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Art Unit 3644